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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JOHN WHITMAN et al.,

Plaintiffs and Appellants,

v.

CITY OF SAN
BUENAVENTURA et al.,

Defendants and
Respondents.

2d Civil No. B289106
(Super. Ct. No. 56-2016-
00485769-CU-MC-VTA)
(Ventura County)

John and Carmel Whitman appeal from the trial court's grant of summary judgment in favor of the City of San Buenaventura (hereinafter, Ventura or the City) and its director of community development, Jeffrey Lambert (collectively, Respondents). (Code Civ. Proc., § 437c, subds. (c) & (m)(1).) The Whitmans contend Respondents' practice of issuing short-term vacation rental (STVR) permits in their neighborhood violates the City's zoning ordinance. We affirm because the ordinance allows for this use.

FACTUAL AND PROCEDURAL HISTORY

The Whitmans have lived in the Pierpont neighborhood of Ventura for more than two decades. The City's zoning ordinance designates the neighborhood as part of the "R-1-B Residential Single Family Beach Zone" (R-1-B Zone).¹ (San Buenaventura Mun. Code,² § 24.212.010.) Since it began regulating STVR's in 2007, the City has permitted several STVR's in the R-1-B Zone. Over the years, the Whitmans complained several times about noise from nearby STVR's. When neither the City nor STVR owners curbed the noise, the Whitmans filed suit against Respondents. They sought an order declaring that the zoning ordinance prohibits STVR's in the R-1-B Zone and an injunction prohibiting the issuance of STVR permits in their neighborhood.

Respondents moved for summary judgment. They argued the City has the power to enact and enforce the zoning ordinance, the Whitmans' complaint was untimely, and the zoning ordinance permits STVR's in the R-1-B Zone. They also argued judgment should be entered in favor of Lambert because, as the City's director of community development, he is not responsible for issuing STVR permits or administering the STVR ordinance.

The Whitmans filed a cross-motion for summary judgment. They argued their requested relief would not interfere with the City's discretion to enact and implement the STVR

¹ We grant the parties' requests to take judicial notice of relevant portions of the Municipal Code. (Evid. Code, §§ 452, subds. (b) & (c), 459.)

² All unlabeled ordinance references are to this code.

ordinance. They also argued STVR's are not allowed in the R-1-B Zone because they are similar to hotels, a use not permitted in their neighborhood.

The trial court determined that the City has the power to permit and regulate STVR's and that STVR's are allowed in the R-1-B Zone. Even if they were not, the Whitmans' suit was untimely. The court granted Respondents' motion for summary judgment.

DISCUSSION

Summary judgment

Summary judgment is appropriate "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) We independently review whether Respondents were entitled to summary judgment. (*Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336.) We may affirm the trial court's decision on any basis; we are reviewing the court's ruling, not its rationale. (*Ibid.*)

Court review of city discretion

Respondents contend separation of powers principles prevent this court from reviewing their actions in granting the STVR permits. The Whitmans contend otherwise. We agree with the Whitmans.

"A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) This includes the power to enact and enforce zoning regulations. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1151-1152.) As part of a separate branch

of government, a court cannot command a city to enact specific regulations or direct the city's exercise of discretion when enforcing them. (*Nickerson v. San Bernardino* (1918) 179 Cal. 518, 522-523.) Such a directive would violate separation of powers principles. (*City Council v. Superior Court* (1960) 179 Cal.App.2d 389, 394-395.) But if the city enforces its regulations in a manner prohibited by law, the court may "interfere and enjoin" the enforcement. (*Muchenberger v. City of Santa Monica* (1929) 206 Cal. 635, 646.)

Here, the Whitmans have not challenged the City's ability to enact the STVR ordinance, nor did they ask the trial court to direct Respondents to enforce it in a specific manner. Rather, they asked the court to enjoin Respondents from permitting STVR's in a manner they contend the zoning ordinance prohibits. Determining whether the zoning ordinance prohibits STVR's in the R-1-B Zone is a "proper matter[] for declaratory relief" that does not interfere with the City's legislative functions or discretionary actions. (*Walker v. County of Los Angeles* (1961) 55 Cal.2d 626, 637; see Code Civ. Proc., § 1060.) And if the ordinance does prohibit the STVR's, the court may enjoin Respondents from permitting them in the Whitmans' neighborhood without violating separation of powers principles. (*Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 511-512; see, e.g., *Coffee-Rich, Inc. v. Fielder* (1975) 48 Cal.App.3d 990, 999-1000 [enjoining Department of Agriculture from enforcing unconstitutional statute].)

Relying on *Riggs v. City of Oxnard* (1984) 154 Cal.App.3d 526 (*Riggs*) and *Blankenship v. Michalski* (1957) 155 Cal.App.2d 672 (*Blankenship*), Respondents claim that, even if the zoning ordinance does prohibit STVR's in the R-1-B Zone, the

Whitmans cannot sue to enforce that prohibition. Neither case supports Respondents' claim.

In *Riggs, supra*, 154 Cal.App.3d at page 528, the plaintiff sought to require the City of Oxnard to issue a criminal citation and injunction against a competing business that had purportedly violated the city's zoning ordinance. The trial court denied writ relief. (*Id.* at p. 529.) The Court of Appeal upheld the denial because the plaintiff did not seek enforcement of the zoning ordinance but rather sought penalties of a specific, discretionary nature. (*Id.* at p. 530.) A court cannot compel a city to exercise its discretion in a particular manner. (*Ibid.*)

Here, the Whitmans have not sought to compel Respondents to levy specific penalties against alleged violators of the STVR ordinance; they have sought to force Respondents to issue STVR permits consistent with the zoning ordinance's requirements. Respondents are required to do so by law. (§§ 24.580.020 [permits "shall" be issued "in a manner consistent with the purposes of [the] zoning ordinance"], 24.110.020, subd. (C) ["shall" is mandatory for purposes of the zoning ordinance].) As the *Riggs* court recognized, a court can order a city to "act[] within the limits of [its] power and discretion." [Citation.]" (*Riggs, supra*, 154 Cal.App.3d at p. 530.)

In *Blankenship, supra*, 155 Cal.App.2d at pages 672-673, the plaintiff sought to compel the city attorney to begin abatement proceedings against alleged violators of the local zoning ordinance. The Court of Appeal upheld the trial court's denial of writ relief. (*Id.* at pp. 673, 678.) Though the city attorney had a duty to abate a violation of the zoning ordinance, that duty arose only if he determined that a violation had, in fact, occurred. (*Id.* at p. 675.) Because the city attorney determined

that no violation had occurred, the plaintiff could not compel him to commence abatement. (*Ibid.*)

Unlike the *Blankenship* plaintiff, the Whitmans have not sought to force Respondents to take action against violators of the ordinance. They instead seek to force Respondents to comply with the City's zoning ordinance. That compliance is mandatory in the first instance. (§§ 24.110.020, subd. (C), 24.580.020.) A court can thus compel it. (*Blankenship, supra*, 155 Cal.App.2d at pp. 674-675.)

Timeliness

The Whitmans contend that the trial court erred when it determined that their challenge to the STVR ordinance was untimely pursuant to the provisions of Elections Code section 9235 et seq. Those provisions govern the procedures for suspending—and potentially rejecting the enactment of—a city ordinance by referendum. (See *City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1081-1082 [explaining referendum procedure].) They are inapplicable here because the Whitmans have not sought to prevent the enactment of the STVR ordinance. Their action is not untimely.

Municipal code violation

Turning to the merits, the Whitmans contend that the trial court erred when it determined that the City may issue STVR permits in the R-1-B Zone. We disagree because the ordinance plainly allows for such uses.

Interpretation of the zoning and STVR ordinances presents a question of law for our independent review. (*County of Madera v. Superior Court* (1974) 39 Cal.App.3d 665, 668.) Our task is to determine the City's intent to effectuate the ordinances' purposes. (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51

Cal.4th 717, 724 (*Bruns*.) We first examine the words of the ordinances, giving them their plain, commonsense meaning. (*Ibid.*) We give meaning to every word, and strive to avoid an interpretation that renders words surplusage. (*Carmack v. Reynolds* (2017) 2 Cal.5th 844, 849-850.) We examine the words in the context of the ordinances' framework, working to harmonize provisions relating to the same subject matter. (*Bruns*, at p. 724.) We follow the plain meaning of the ordinances unless doing so would lead to absurd results the City did not intend. (*Ibid.*)

If the ordinances' meanings are unclear, we may examine their underlying purposes and legislative history to help us determine the City's intent. (*Bruns, supra*, 51 Cal.4th at p. 724.) We may also "consider the impact of an interpretation on public policy" and "the consequences that will flow from a particular interpretation." [Citation.] (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663.) The City's interpretation of the ordinances is entitled to deference. (*City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1091.)

The plain meanings of the zoning and STVR ordinances allow the City to issue STVR permits in the R-1-B Zone. The STVR ordinance allows "residential dwelling unit[s]" to be used as STVR's if the owners of the units comply with certain permitting requirements and pay required fees. (§§ 6.455.010, 6.455.030, 6.455.050, 6.455.100.) The ordinance defines an "STVR" as "a 'dwelling unit' other than a dwelling unit located in a 'hotel' . . . that is rented to a tenant for a period of not more than 30 consecutive days." (§ 6.455.020.) A "dwelling unit" is "[a]ny building or portion thereof which contains living facilities including all of the following: provisions for sleeping, a

kitchen, and sanitation for not more than one family.”

(§ 24.110.650.) In contrast, a “hotel” is a “building containing six or more rooms occupied as a temporary abiding place for persons who, for compensation, are lodged with or without meals.”

(§ 24.110.930.) Motels are included in this latter definition.

(*Ibid.*)

The zoning ordinance defines three basic classifications of property uses: residential, general (primarily private businesses and public entities), and agricultural. The “residential” classification “describe[s] principal uses of sites that include *dwelling units*.” (§ 24.115.210, italics added.) Among the residential uses allowed in the R-1-B Zone are single-family residences. (§ 24.212.020.) A “family” is “[a]n individual or two or more persons living together as a single household unit in a *dwelling unit*.” (§ 24.110.720, italics added.) A “household” is “[a] family living together in a single *dwelling unit*, with common access to, and common use of, all living areas and a kitchen within the dwelling unit.” (§ 24.110.940, italics added.) Because single-family residences are, by definition, dwelling units other than hotels, the zoning and STVR ordinances permit them to be used as STVR’s in the R-1-B Zone.

The Whitmans counter that STVR’s are more akin to “lodging services” than single-family residences, and as such are not allowed in the R-1-B Zone. (See §§ 24.212.020, 24.212.030.) This claim ignores the definitions set forth in the zoning and STVR ordinances.

The zoning ordinance delineates two types of lodging services: “hotels and motels” and “bed and breakfast inns.” (§ 24.115.3280.) Hotels and motels are explicitly excluded from use as an STVR. (§ 6.455.020.) “Bed and breakfast inns” are

“[t]emporary lodging provided by establishments [that] offer three to five individual rooms or suites in a single-family dwelling unit for temporary rental to members of the public.”

(§ 24.115.3280.) Nothing in this definition requires the rooms for rent in a bed and breakfast inn to have kitchen or sanitation services—amenities required for STVR’s. (§ 24.110.650.)

Additionally, bed and breakfast inns have lodging for more than one family within a dwelling unit. An STVR, in contrast, has amenities for “not more than one family.” (§ 24.110.650.)

That STVR’s qualify as “businesses”—as defined in the City’s business license tax regulations (see § 4.155.110)—does not change our conclusion. The City recognizes that STVR’s are businesses: the STVR ordinance is part of the Municipal Code’s business regulations. But their income-generating potential does not make them “lodging services.” For example, long-term rental properties also have the potential to generate income for their owners. It follows that these properties, too, would be “lodging services” as the Whitmans’ interpret the term, prohibiting them in the R-1-B Zone. Yet nothing in the zoning ordinance suggests that property owners cannot rent their properties in the Pierpont neighborhood. What matters is how the property is used, not whether it is rented. Because an STVR is used as a single-family residence, the trial court properly granted Respondents’ motion for summary judgment.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Mark S. Borrell, Judge

Superior Court County of Ventura

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Appellants.

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